UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 19-23649-rdd

Adv. Case No. 21-07005-rdd

- x

In the Matter of:

PURDUE PHARMA L.P.,

Debtor.

- x

AVRIO HEALTH L.P., et al.,

Plaintiffs,

v.

AIG SPECIALTY INSURANCE COMPANY (f/k/a American Insurance),

Defendants.

- x

United States Bankruptcy Court
300 Quarropas Street, Room 248
White Plains, NY 10601

April 6, 2021
10:07 AM

B E F O R E :
HON ROBERT D. DRAIN
U.S. BANKRUPTCY JUDGE

ECRO: UNKNOWN

HEARING re Notice of Hearing on the NAS Children Ad Hoc Committees Motion for Entry of an Order Authorizing the Filing of Certain Information and Exhibits Under Seal in Connection with the Ex Parte Motion Requesting an Order Authorizing Examinations and Production of Documents (related document(s)2139, 2538).

HEARING re Motion to Authorize THE NAS CHILDREN AD HOC COMMITTEE'S MOTION ENTRY OF ORDER PURSUANT TO 11 U.S.C. §§ 105(A) AND 107(B) AND FED. R. BANKR. P. 9018 AUTHORIZING THE FILING OF CERTAIN INFORMATION AND EXHIBITS UNDER SEAL IN CONNECTION WITH THE NAS CHILDREN AD HOC COMMITTEE'S EX PARTE MOTION REQUESTING A COURT ORDER AUTHORIZING EXAMINATIONS PURSUANT TO FEDERAL RULES OF BANKRUPTCY PROCEDURE 2004 AND 9006 filed by Scott S. Markowitz on behalf of Ad Hoc Committee of NAS Babies. (ECF #2139)

HEARING re Objection to Motion / Debtors' Objection to the NAS Children Ad Hoc Committee's Motion for Entry or an Order Pursuant to 11 U.S.C. §§105(a) and 107(b) and Fed. R. Bankr. P. 9018 Authorizing the Filing of Certain Information and Exhibits under Seal in Connection with the NAS Children Ad Hoc Committee Ex Parte Motion Requesting a Court Order Authorizing Examinations Pursuant to Federal Rules of Bankruptcy Procedure 2004 and 9006 (related document(s)2139) filed by James I. McClammy on behalf of Purdue Pharma L.P. (ECF #2155)

HEARING re Motion to Authorize The NAS Children Ad Hoc Committee's Motion Entry of Order Pursuant to 11 U.S.C. Sections 105(a) and 107(b) and Fed. R. Bankr. P. 9018 Authorizing the Filing of Certain Information and Exhibits Under Seal in Connection with the Reply and Supplemental Declaration in Further Support of NAS Children Ad Hoc Committee's Ex Parte Motion Requesting a Court Order Authorizing Examinations Pursuant to Federal Rules of Bankruptcy Procedure 2004 and 9006 filed by Scott S. Markowitz on behalf of Ad Hoc Committee of NAS Babies. (Attachments: # 1 Exhibit A - Proposed Order # 2 Exhibit B - Redacted Debtors' 2004 Reply) (ECF #2538).

HEARING re Declaration of James I. McClammy in Support of the Debtors Statement in Response to the Reply of the NAS Children Ad Hoc and Supplemental Declaration in Further Support of its Request for Entry of a Court Order Authorizing Examinations Pursuant to Federal Rules of Bankruptcy Procedure 2004 and 9006 (related document(s)2584) filed by James I. McClammy on behalf of Purdue Pharma L.P. (ECF #2585)

HEARING re Adversary proceeding: 21-07005-rdd Avrio Health L.P. et al v. AIG Specialty Insurance Company (f/k/a American In Notice of Adjournment of Hearing for Pretrial Conference filed by Paul E. Breene on behalf of Avrio Health L.P., Purdue Pharma Inc., Purdue Pharma L.P., Purdue Pharma Manufacturing L.P., Purdue Pharma of Puerto Rico, Purdue Pharmaceutical Products L.P., Purdue Pharmaceuticals L.P., Purdue Transdermal Technologies L.P., Rhodes Pharmaceuticals L.P., Rhodes Technologies. with hearing to be held on 4/6/2021 (ECF #37)

HEARING re Adversary proceeding: 21-07005-rdd Avrio Health L.P. et al v. AIG Specialty Insurance Company (f/k/a American In Pre-trial Conference

HEARING re Adversary proceeding: 21-07005-rdd Avrio Health L.P. et al v. AIG Specialty Insurance Company (f/k/a American In Letter From Tancred Schiavoni On Behalf Of All Defendant Insurers (related document(s)38)

HEARING re Adversary proceeding: 21-07005-rdd Avrio Health L.P. et al v. AIG Specialty Insurance Company (f/k/a American In

Related Documents:

Complaint (document #1)

Summon (document #3)

Scheduling Order (document #17)

Notice of Adjournment of Pre-Trial Conference (document #24)

Letter to the Honorable Robert D. Drain Filed by Frederick E. Schmidt on behalf of Liberty Insurance Corporation, Liberty Mutual Fire Insurance Company, Liberty Mutual Insurance Company (document #25)

HEARING re Motion to Withdraw the Reference of Adversary Proceeding filed by Frederick E. Schmidt on behalf of Liberty Insurance Corporation, Liberty Mutual Fire Insurance Company, Liberty Mutual Insurance Company (document #28)

HEARING re Memorandum of Law in Support of Motion to Withdraw the Reference (related document(s)28) filed by Frederick E. Schmidt on behalf of Liberty Insurance Corporation, Liberty Mutual Fire Insurance Company, Liberty Mutual Insurance Company (document #29)

HEARING re Letter to the Honorable Robert D. Drain Filed by Paul E. Breene on behalf of Avrio Health L.P., Purdue Pharma Inc., Purdue Pharma L.P., Purdue Pharma Manufacturing L.P., Purdue Pharma of Puerto Rico, Purdue Pharmaceutical Products L.P., Purdue Pharmaceuticals L.P., Purdue Transdermal Technologies L.P., Rhodes Pharmaceuticals L.P., Rhodes Technologies (document #32)

HEARING re Letter to Judge Drain on behalf of at least 13 insurer defendants, who on April 5 will be filing a joint motion to stay this Adversary Proceeding based on a mandatory arbitration provision in their policies Filed by Tancred V. Schiavoni on behalf of Chubb Bermuda Insurance Ltd (document #33)

HEARING re Letter to the Honorable Robert D. Drain Filed by Frederick E. Schmidt on behalf of Liberty Insurance Corporation, Liberty Mutual Fire Insurance Company, Liberty Mutual Insurance Company (document #34)

HEARING re Notice of Adjournment of Hearing for Pretrial Conference filed by Paul E. Breene on behalf of Avrio Health L.P., Purdue Pharma Inc., Purdue Pharma L.P., Purdue Pharma Manufacturing L.P., Purdue Pharma of Puerto Rico, Purdue Pharmaceutical Products L.P., Purdue Pharmaceuticals L.P., Purdue Transdermal Technologies L.P., Rhodes Pharmaceuticals L.P., Rhodes Technologies. with hearing to be held on 4/6/2021 (document #37)

HEARING re Civil Cover Sheet from U.S. District Court, Case Number: 21-cv-2674 Judge Kenneth M. Karas (related document(s)28) (document #39)

HEARING re Joint Motion to Withdraw the Reference Of Adversary Proceeding As Against Movants In The Event That The Court Denies The Liberty Mutual Withdrawal Motion filed by Paul R Koepff on behalf of Arch Reinsurance Ltd. (document #47)

HEARING re Disclosure Statement filed by Kelly Tsai on behalf of American Guarantee and Liability Insurance Company, Steadfast Insurance Company (document #49)

HEARING re Answer to Complaint (Related Doc # 1) filed by Kelly Tsai on behalf of American Guarantee and Liability Insurance Company, Steadfast Insurance Company (document #51)

HEARING re Statement of Joinder in the Liberty Mutual defendants' motion to withdraw the reference, (related document(s)28) filed by Kelly Tsai on behalf of American Guarantee and Liability Insurance Company, Steadfast Insurance Company (document #52)

HEARING re Memorandum of Law in Support of Motion to Withdraw the Reference filed by Paul R Koepff on behalf of Arch Reinsurance Ltd.(document #56)

HEARING re Motion to Stay / Notice of Motion for Arbitration Insurers' Joint Motion to Stay the Claims Against Them in the Adversary Proceeding in Favor of Arbitration filed by Mitchell Jay Auslander on behalf of AIG Specialty Insurance Company (f/k/a American International Specialty Lines Insurance Company), American International Reinsurance Company (f/k/a Starr Excess Liability Insurance International Limited), New Hampshire Insurance Company(document #57)

HEARING re Memorandum of Law in Support of the Arbitration Insurers' Joint Motion to Stay the Claims Against Them in the

HEARING re Adversary Proceeding in Favor of Arbitration (related document(s)57) filed by Mitchell Jay Auslander on behalf of AIG Specialty Insurance Company (f/k/a American International Specialty Lines Insurance Company), American International Reinsurance Company (f/k/a Starr Excess Liability Insurance International Limited), New Hampshire Insurance Company (document #59)

HEARING re Answer to Complaint (Related Doc # 1) (related document(s)1) filed by Frederick E. Schmidt on behalf of Liberty Insurance Corporation, Liberty Mutual Fire Insurance Company, Liberty Mutual Insurance Company (document #61)

HEARING re Motion for More Definite Statement / Notice of Motion for a More Definite Statement filed by Mitchell Jay Auslander on behalf of National Union Fire Insurance Company of Pittsburgh, PA (document #62)

HEARING re Memorandum of Law in Support of National Union's Rule 12(e) Motion for a More Definite Statement (related document(s)62) filed by Mitchell Jay Auslander on behalf of National Union Fire Insurance Company of Pittsburgh, PA (document #63)

HEARING re Statement Liberty Mutual Insurance Company, Liberty Mutual Fire Insurance Company, and Liberty Insurance Corporation's Rule 7007.1 Disclosure Statement filed by Frederick E. Schmidt on behalf of Liberty Insurance Corporation, Liberty Mutual Fire Insurance Company, Liberty Mutual Insurance Company (document #65)

HEARING re Answer to Complaint (Related Doc # 1) filed by Lauren M. Macksoud on behalf of XL Insurance America, Inc. (document #70)

HEARING re Motion for More Definite Statement filed by William T. Russell Jr. on behalf of Gulf Underwriters Insurance Company, St. Paul Fire and Marine Insurance Company (document #71)

HEARING re Memorandum of Law in support of Motion for a More Definite Statement (related document(s)71) filed by William T. Russell Jr. on behalf of Gulf Underwriters Insurance Company, St. Paul Fire and Marine Insurance Company (document #72)

HEARING re Motion to Dismiss Party filed by Dan D Kohane on behalf of Chubb European Group SE (f/k/a ACE Insurance S.A.N.V.), Darag Insurance UK Limited (f/k/a The Underwriter Insurance Company Limited), QBE UK Limited (f/k/a QBE International Insurance Company Limited), SR International Business Company SE (f/k/a SR International Business Insurance Company Limited), Zurich Specialties London Limited (f/k/a Zurich Reinsurance (London) Limited) (document #73)

HEARING re Corporate Ownership Statement . Corporate parents added to case: The Travelers Indemnity Company. Corporate Affiliates added to case:, The Travelers Companies, Inc., Travelers Insurance Group Holdings Inc., Travelers Property Casualty Corp.. Filed by William T. Russell Jr. on behalf of Gulf Underwriters Insurance Company (document #74)

HEARING re Corporate Ownership Statement . Corporate parents added to case: The Travelers Companies, Inc.. Filed by William T. Russell Jr. on behalf of St. Paul Fire and Marine Insurance Company (document #76)

HEARING re Motion to Dismiss Adversary Proceeding For Lack of Personal Jurisdiction filed by Barbara M. Almeida on behalf of Chubb Bermuda Insurance Ltd. (f/k/a ACE Bermuda Insurance Ltd.) (document #77)

HEARING re Memorandum of Law In Support Of Motion To Dismiss For Lack Of Personal Jurisdiction filed by Barbara M. Almeida on behalf of Chubb Bermuda Insurance Ltd. (f/k/a ACE Bermuda Insurance Ltd.) (document #78)

HEARING re Motion to Withdraw the Reference filed by Dan D Kohane on behalf of AIG Specialty Insurance Company (f/k/a American International Specialty Lines Insurance Company), American International Reinsurance Company (f/k/a Starr Excess Liability Insurance International Limited), Aspen American Insurance Company, Chubb European Group SE (f/k/a ACE Insurance S.A.N.V.), Darag Insurance UK Limited (f/k/a The Underwriter Insurance Company Limited), National Union Fire Insurance Company of Pittsburgh, PA, New Hampshire Insurance Company, North American Elite Insurance Company,

QBE UK Limited (f/k/a QBE International Insurance Company Limited), SR International Business Company SE (f/k/a SR International Business Insurance Company Limited), XL Bermuda Ltd., XL Insurance America, Inc., Zurich Specialties London Limited (f/k/a Zurich Reinsurance (London) Limited) (document #79)

HEARING re Motion to Dismiss Adversary Proceeding For Lack of Personal Jurisdiction filed by George Calhoun IV on behalf of Allied World Assurance Company, Ltd. (document #80)

HEARING re Memorandum of Law In Support of Motion To Dismiss For Lack Of Personal Jurisdiction filed by Paul R Koepff on behalf of Arch Reinsurance Ltd. (document #81)

HEARING re Motion to Dismiss Adversary Proceeding For Lack of Personal Jurisdiction filed by George Calhoun IV on behalf of Allied World Assurance Company, Ltd. (document #82)

HEARING re Memorandum of Law In Support of Defendant Allied World Assurance Company Ltd's Motion to Dismiss For Lack of Personal Jurisdiction (related document(s)82) filed by George Calhoun IV on behalf of Allied World Assurance Company, Ltd. (document #83)

HEARING re Motion to Dismiss Adversary Proceeding filed by Thomas Maeglin on behalf of Liberty Mutual Insurance Europe SE (f/k/a Liberty International Insurance Company) (document #84)

HEARING re Memorandum of Law IN SUPPORT OF THE MOTION OF LIBERTY MUTUAL INSURANCE EUROPE SE TO DISMISS FOR LACK OF PERSONAL JURISDICTION (document #85)
Answer to Complaint (Related Doc # 1) filed by Dan D Kohane on behalf of North American Elite Insurance Company (document #86)

HEARING re Answer to Complaint (Related Doc # 1) filed by Dan D Kohane on behalf of Aspen American Insurance Company (document #87)

HEARING re Motion to Dismiss Adversary Proceeding For Lack of Personal Jurisdiction filed by Richard Joseph Geddes on behalf of XL Bermuda Ltd. (document #88)

A P P E A R A N C E S :

DAVIS POLK & WARDWELL
Attorneys for Debtor
450 Lexington Avenue
New York, NY, 10017

BY: MARSHALL HUEBNER (TELEPHONICALLY)
JAMES MCCLAMMY (TELEPHONICALLY)

TARTER KRINSKY & DROGIN
Attorneys for NAS Committee
1350 Broadway
New York, NY, 10018

BY: SCOTT MARKOWITZ (TELEPHONICALLY)

LAW OFFICE OF KEVIN THOMPSON
Attorneys for NAS
1835 Upperline
New Orleans, LA, 70115

BY: KEVIN THOMPSON (TELEPHONICALLY)

REED SMITH
Attorneys for Debtors
599 Lexington Avenue
New York, NY, 10022

BY: PAUL BREENE (TELEPHONICALLY)

GILBERT LLP
Attorneys for Ad Hoc Committee
700 Pennsylvania Ave SE
Washington, DC 20003

BY: RICHARD LEVERIDGE (TELEPHONICALLY)

O'MELVENY
Attorneys for Arbitration Insurers
7 Times Square
New York, NY 10036

BY: TANCRED SCHIAVONI (TELEPHONICALLY)

MINTZ LEVIN COHN FERRIS GLOVSKY & POPEO, P.C.
Attorneys for Liberty Insurance Corporation
88 Wharf Street
Milton, MA, 02186

BY: KIM MARRKAND (TELEPHONICALLY)

CLYDE & CO
Attorneys for Arch Reinsurance Ltd.
405 Lexington Avenue
New York, NY, 10174

BY: PAUL KOEPFF

WILLKIE FARR & GALLAGHER
Attorneys for Certain AIG Insurers
787 Seventh Avenue
New York, NY, 10019

BY: MITCHELL AUSLANDER

Page 19

IFRAH LAW PLLC

Attorneys for Ironshore Specialty Insurance Company

1717 Pennsylvania Avenue, NW

Washington, DC, 20006

BY: GEORGE CALHOUN

ALSO APPEARING TELEPHONICALLY:

DONALD CREADORE, NAS Committee

SCOTT BICKFORD, NAS Committee

P R O C E E D I N G S

THE COURT: Good morning, this is Judge Drain. We are here on a non-omnibus hearing and conference agenda in In re Purdue Pharma LP.

These matters are being heard completely telephonically. Therefore, in addition to introducing yourself and your client the first time that you speak, you should state your name if you speak later so that the court reporter and I can put together your voice with your name.

There is one authorized recording of today's hearings that's taken by Court Solutions which provides a copy on a daily basis to our clerk's office. If you want a transcript of your hearing from today, you should contact the clerk's office to arrange for the production of one.

Because these matters are being heard completely telephonically, you need to keep your phone on mute unless of course you're speaking, at which point you need to unmute yourself.

So with that introduction, I have the amended agenda for this morning's hearing and I'm happy to go down the agenda in the order on it.

MR. HUEBNER: Your Honor, it's Marshall Huebner from Davis Polk. Can I just have 40 or 45 seconds before we start the agenda?

THE COURT: Okay, that's fine.

MR. HUEBNER: Good morning, Your Honor. May it please the Court. Marshall Huebner of Davis Polk & Wardwell on behalf of the Debtors. Just a quick update that I think chambers certainly knows about, but for the benefit of the many parties to the case.

Progress absolutely continues the pace. Many items that we discussed at some length at our most recent omnibus hearing with respect to both issues on the plan that include both intra-private, and public-private and intra-public and estate and creditor Sackler (indiscernible). This is a very complicated case with very complicated issues and many, many parties and many sort of crosscurrents and cross threads. And so unfortunately, we are not going to be able to have a disclosure statement on April 21st, which would have required in our view substantially advanced documents filed really probably round about today or close to today in order to be fair and appropriate and give people as much notice as we reasonably can.

We are working both with chambers and, frankly, with others who have hearings scheduled for the first week in May to see exactly what slot we can pop out. This morning I offered a dear friend a box of Godiva and two fruit baskets to switch hearing spots with us. So we'll see if that bears fruit. But I did want to let people know as soon as that comes to rest, which should be I think in the

next day or so, we will of course work with chambers and file a notice of adjournment that we're staying the hearing to the new date with the appropriate both objection deadline and reply deadline. I just did want to give everyone a public service announcement in case -- although I know all the core parties to the case I think know about, the fact that the schedule is shifting slightly, I did want to let the larger world know in case anybody else was working on disclosure statement objections or other documents where an earlier update would be much nicer than a later one.

So apologies for the interjection, but I thought that it was important for parties to know where we stand and that things are still progressing on the various fronts that we're working on. And with that, Your Honor, neither of the two matters -- well, the second one I guess sort of is, but the first one is -- we are definitely not the movant until and unless someone tells me that I have it wrong. I would propose to turn the virtual podium over to counsel for the NAS folks.

THE COURT: Okay, very well. Thank you. So you're right. The first matter on the agenda for today is the NAS Children Ad Hoc Committee's Motion to seal certain documents in which they seek discovery under Bankruptcy Rule 2004.

I have reviewed the pleadings on this, which with

the exception of the initial pleading, have nothing to do with sealing and everything to do with the merits of the original Rule 2004 motion which then changed significantly in a so-called reply, the so-called objection to the sealing motion, dated March 19th.

So maybe to begin, someone from the NAS Committee can update me on where this matter stands.

MR. MARKOWITZ: Good morning, Your Honor. It's Scott Markowitz, Tarter, Krinsky & Drogin, counsel for the NAS Committee.

As Your Honor knows, the NAS Committee representatives are lawyers who represent the children. And on the call is Donald Creadore and Scott Bickford. And they are closer to the details to this, so they are going to be addressing Your Honor's questions and making the argument.

THE COURT: Okay.

MR. MARKOWITZ: Don?

MR. CREADORE: Good morning, Your Honor. Can you hear me?

THE COURT: Yes, I can hear you fine. Thanks.

MR. CREADORE: Good morning. Thank you. You asked a procedural question. Yes, this is actually a continuation of the motion that was filed in December seeking to seal but also request examinations. And I believe as the objections and as the other pleadings seem to

lead us to conclude, that this is also an argument and typically it seems to be primarily based upon the need for examinations and that the reason for disclosure was a complementary request that was made because of the nature and the confidential nature I should say of the documents that have been provided to the Court in an unredacted fashion and to certain isolated parties pursuant to the order.

THE COURT: Okay. Have there been any further developments on the merits of the Rule 2004 motion?

MR. CREADORE: For me to report on behalf of the NAS Ad Hoc Committee, the report would be that we have reached an impasse, and that would be part of the presentation that we would have this morning. I intend just to provide a short, brief opening remark and then I was going to follow that with addressing three points, the first point being the informal discovery and where we've gotten to to date with that would be of interest to the Court. The second point would be why the relief is consistent with Bankruptcy Rule 2004, and the third point was how the NAS -- the claims I should say of NAS children suffer irreparable injury if the relief was not awarded.

And then of course I also intend to spend a brief moment in a bullet-like fashion to respond to some of the fresh concerns that debtors had raised in their statement as

well as previously in their objections. And then of course I'd leave it open for the Court to determine how it would like to proceed from there.

I by no reason mean by just discussing just several points of the objections in the statement that has been recently filed to mean that the other ones aren't important, and of course we would be prepared to respond to them as well. That was my initial thoughts, Your Honor.

THE COURT: What discovery relief are you seeking at this point?

MR. CREADORE: Well, as a general matter, the NAS Ad Hoc Committee is requesting access to all toxicology studies, including materials not released to the FDA. The reason has been we've been asking for this information because it's vitally important to us as part of our due diligence. And for eight months and counting we've been seeking it. For many months, eight months and counting as well, the adult PIs have added a new twist by insisting that in every draft of the proposed TDP for distribution of opioid funds, the PI claims of NAS children scientifically substantiate their claims for personal injuries sustained. Now, this standard does not apply to adult PI claims. It only applies to the NAS children.

Now, the Debtors are continuing to endorse this criteria irrespective of the fact that it applies only to

the PI claims of NAS children in this case. But nonetheless as a result of this unique circumstances, the PI claims of NAS children will require access from the Debtors to the information being requested in order to satisfy the eligibility requirements, in order to --

THE COURT: Can I interrupt you on that point then? This is one of the points I was referring to when it seemed to me, as I stated, that the initial basis for the December 2004 motion changed significantly with the March 19 reply by the NAS Committee.

If the purpose of obtaining toxicology studies is to substantiate proofs of claim that have been filed -- and obviously there was a bar date in this case and I think we're only talking about claims that have been filed -- then the proper vehicle for taking such discovery is under the Part 7 rules for contested matters as set out in a number of cases, including I think probably most recently by Judge Trust in In re Orion Healthcorp, Inc., 596 B.R. 228, 236 (Bankr. E.D.N.Y. 2019).

A Rule 2004 request is a different procedural device. Its purpose is to enable parties in interest to determine whether they have a claim and/or to take discovery otherwise pertinent to the administration of the case or the Debtor's assets.

MR. CREADORE: May I respond to that, Judge?

MR. BICKFORD: Actually --

THE COURT: But maybe you want the bankruptcy lawyer to respond.

MR. BICKFORD: Your Honor, this is Scott Bickford with Mr. Creadore for the NAS children. The issue that you bring up is that the NAS children, because of the manner in which the pleadings have been filed in this case, specifically the disclosure statement which omits qualification and eligibility for NAS children is at the heart of the issue because there had been no qualification, there has been no eligibility set. And although we've been privy to the iterations of the TDP, which will control whether or not these NAS children actually have a claim, presently the Debtor has embraced a position which will require us to augment scientific information regarding certain claims so that the children can have a claim within the bankruptcy. Otherwise, because there has been a requirement thus far of scientific proof on behalf of the NAS children, not the adult victims, but just the NAS children, and that scientific proof is contained within toxicology statements, some of which have been provided by Mundipharma already in this case readily within a number of days. And I think our request is that we get the remaining toxicology statements not provided to the DA or a definitive statement from the Debtor that those don't exist. And I

think that the Court brought that up in December, and we're bringing it up again, that this is what's sought after, and that's why it's sought after.

And as long as the cloud remains as to the qualifications and eligibility of any who participate in this bankruptcy and those qualifications are specifically left out of the disclosure statement, then we're in this box. And that's where this discovery is aimed, Your Honor.

THE COURT: I guess partly I'm confused because none of this point was made in any of the pleadings, which is very frustrating to me. I'm also confused because I don't understand what you mean by cannot participate in these cases. Are you saying cannot participate in the sense of getting a distribution on account of an allowed personal injury claim, or in some other way?

MR. MCCLAMMY: Your Honor, Jim McClammy for the Debtors. May I be heard for just one moment?

THE COURT: Well, unless it's to say that the issue I'm raising is not an issue, I'd like to continue my question of counsel for the NAS Ad Hoc Committee.

MR. MCCLAMMY: It does pertain to that, Your Honor, and was only to raise a slight objection to the discussion of something that's not before the Court, which is the repeated referral to a trust distribution procedure that still remains very much in discussion and has not been

finalized. So I only raise that point, Your Honor.

THE COURT: Okay, fine.

MR. BICKFORD: And, Your Honor, I would agree with that. And the problem is that the trust distribution agreement, while the Debtors say it is not finalized, I don't know -- it is they that are (indiscernible) at this point. But that document is covered, according to the Debtors at least at this point, by a privilege of mediation because it was discussed in mediation. And it makes it very difficult. I can only tell you at this point what our understanding of the last iteration is. And I can tell you that the disclosure statement filed by the Debtor specifically omits qualification and eligibility for NAS children to participate in getting a claim at all. And --

THE COURT: Well, I'm sorry, let me --

MR. BICKFORD: And that is the issue and that's --

THE COURT: That's my question. I have before me a description from the disclosure statement of the NAS Class 9 claims, which is the NAS Monitoring Claims. We're not talking about that, right? That's a separate --

MR. BICKFORD: That is correct, Your Honor.

THE COURT: But that description also says, "All PI claims held by NAS children or their states or guardians and all related claims against release parties or shareholder release parties will be channeled to the PI

trust as discussed below."

MR. BICKFORD: And that is correct. And there is a statement within the disclosure statement which says that we have omitted qualification and eligibility criteria.

THE COURT: I'm sorry, we have what? We have omitted?

MR. BICKFORD: Qualification and eligibility criteria from the disclosure statement.

THE COURT: We have omitted -- you have to explain to me the import of that. What does that mean?

MR. BICKFORD: Well, I perceive what it means is that the criteria which someone is qualified or eligible to participate in the PI pool of money dedicated to adult and NAS victims has been purposely left out of the disclosure statement and is going to be contained in some future-filed trust distribution procedure. But as it stands right now, neither the eligibility or the qualifications for an NAS claimant to claim money has been disclosed, or according now to the Debtor, is still in a state of flux.

THE COURT: Well, isn't it just -- well, that may be the case. But the plan says all PI claims of NAS children and their estates or guardians will be channeled to the PI trust. So as we now stand, it's a PI claim, whatever that is. Right? You have to show claim for a personal injury.

MR. BICKFORD: It is a PI claim, but whether or not I qualify or I am eligible to make that claim within the trust is the issue. And --

THE COURT: Isn't that the same thing for any personal injury claimant whether they have a claim or not?

MR. BICKFORD: The answer would be yes. But in terms of how the last iteration of the trust distribution procedure unfolds, the children basically have to produce scientific data to raise the claims that they can be monetized with. And --

THE COURT: Okay. So would any personal injury claimant have to produce something to justify their claim if there's an objection to the claim.

MAN: No.

THE COURT: No? PI claimants don't have to prove their claim in some way, shape, or form if there is an objection?

MR. BICKFORD: Well, if there's -- I wasn't the person that said no, Your Honor. And the issue is in this case what's being asked is in fact -- what's being asked to support those claims is the information that we're asking for in this motion.

THE COURT: How is it being asked if there's no objection to the claims on file yet? There's no -- I don't understand how it's being asked. If it were asked, it would

be part of a contested matter.

MR. BICKFORD: Simply put, the requisite for us to file a claim based upon what we understand now TDP is will require the information that we're seeking from the Debtor.

THE COURT: But the claims are already filed. There's a bar date. They're filed already.

MR. BICKFORD: In order for the claim to be eligible or qualify.

THE COURT: What else would it be other than a personal injury claim?

MR. BICKFORD: That I have a specific injury that is or is not covered.

THE COURT: Right. So what else would it be other than a personal injury claim?

MR. BICKFORD: I --

MR. MARKOWITZ: Judge, this is Scott Markowitz. I think what we're trying to say is that no one's going to be objecting to claims here. There's going to be a person appointed, as in other of these kind of cases, that applies points and then makes a distribution based upon those points. There's no objections to claims. The Debtor is not objecting to claims. Nobody is objecting to claims here. It's just there's going to be a process --

THE COURT: I'm assuming -- well, maybe I'm missing something. But I'm assuming that if Mary Smith

files a claim that is not based on fact, is not based on anything, that there will be an objection to her claim by whoever is administering the trust. It's not fair to all the other people that have real claims.

MR. MARKOWITZ: If there's something that extreme. But there's not really claims like that. There's claims of children who were born with various levels of problems. And in order to ascertain the amount of points to determine a dollar amount, I think what Mr. Bickford is saying is that these reports, this information that we believe the Debtor has, and I know the IACs have produced it, helps to provide that information to the claims reviewer so that that can -- that the sufficient number of points to monetize that claim can be ascertained. And without that information, it's solely in control of the Debtors. It hampers the ability to monetize a claim on a scoring grid. And these documents are in the possession of the Debtor is what we believe. And that's what he's saying.

THE COURT: You know what? You guys have got to write this out for me. This is the third iteration of the reason for this motion. This is ridiculous, honestly. If that's what you're fighting about, you should spell it out. I could think of a response right now, Mr. Markowitz, to what you just told me, which is that if all of these claims are going to be allowed as filed, why does a toxicology

study that goes to liability not a strength of a claim? Why is it relevant in the first place?

MR. THOMPSON: This is Kevin Thompson, Your Honor, for the NAS. I'm an environmental attorney and I deal with these issues constantly. They don't go to liability. They go to the strength of the claim. They go to the issue of causation. And the issue that has been presented by the defendants and the industry in a number of depositions is that while there may be association with the long-term effects of NAS that has been proven, there is not causation that has been proven.

We would of course argue with that. And the best evidence we have found to support our causation arguments have come from the documents that have been adduced through the informal discovery. That informal discovery has also --

THE COURT: I'm sorry, I'm going to have to interrupt. Isn't causation another word for liability?

MR. THOMPSON: No, Your Honor. Specific and general causation in toxicology and in toxic cases of injury, the liability is they breach some sort of responsibility. The causation goes to you may have been guilty of releasing a toxin or a pharmaceutical into the market or into the environment that may have caused an injury or may have been a breach of your duty. But with each individual claimant or plaintiff or class member, there

generally has to be a general causation and a specific causation established before you can recover. And that's where we are. The liability is not an issue in a case like this. It's often not an issue in a matter of environmental class distribution of funds. But what is a matter is whether or not you have general and specific causation for a class member, claimant, mass tort participant.

And the only place on earth we're going to find these is here. It's not overburdensome because the IACs have already signed an agreement and did it over a weekend. We think that there's -- plus, the IAC response showed us that there were -- when they gave us their list, we found all sorts of studies that we couldn't find anywhere else.

That only people on earth that are going to do this kind of animal toxicology for the manufacturers, and Purdue in particular, years before the new drug application was filed -- this is what they don't want to give us, this is where the truth lies. No one else on earth will ever do this. And toxicology, animal toxicology is the crux of proving specific and general causation. Association is but one part of that. These studies done in the 80s and 90s, this is the proof that everyone needs. It's also critical for our abatement efforts.

THE COURT: All right. I repeat myself. I like to see things in writing. I think that is due to the

parties generally. There is a well-established principle that's inherently in the bankruptcy rules that when one is dealing with a specific, in your words, defense to a claim, you follow the Part 7 rules, not the Rule 2004 rules.

Now, maybe there's something I'm missing here. But we've now spent 15 minutes on this. And, frankly, I'm hearing enough self-contradictory statements and still don't understand the context in which you're seeking it at this point, which is nowhere in the pleading, that you're going to have to supplement it with something that actually focuses on why you want this. And I don't need to hear from a fifth lawyer from the NAS Committee on that issue.

Now, as far as the other points that are raised here, the Debtors have stated in Paragraph 22 of their reply with I guess on exception that they have in fact provided everything or that your clients have everything, the exception being CCDS for hydromorphone hydrochloride. My inclination pending anything else is to have the NAS Committee take oral examination of whoever is the document custodian that has informed the Debtors of the facts that they are alleging in Paragraph 22 and generally the facts that they are alleging in their reply or objection to the March 19 request, including with respect to the "central repository" in Stamford, Connecticut and the company core data sheets.

MR. BICKFORD: Thank you, Your Honor.

MR. MCCLAMMY: Your Honor, Jim McClammy, Davis Polk, on behalf of the Debtors. May I be heard just briefly?

THE COURT: Sure.

MR. MCCLAMMY: Thank you, Your Honor. Really just want to address the one point. And we appreciate Your Honor's time. And I think we've all been struggling with some of the same issues that Your Honor has raised here to exactly what this goes to. But I didn't want to leave the misimpression that was created by NAS counsel on the record without responding.

They mentioned that the studies that they're asking for are things that the Debtors do not want to provide and that the IACs have provided within just a matter of days. As we set out in our papers and as Your Honor has noted, we have in fact provided the NAS Committee with the information that we believe is available on all of these studies. And as a matter of practice, these things as we understand it are kept as part of the NDAs and the investigatory NDAs and those things have been made available to them, as the NAS Committee and themselves cited. Dr. Landau testified as his deposition already that all studies, both clinical and preclinical, intended to support the approval and registration of a product are part of the new

drug applications and therefore are submitted to the FDA. And that's the reason for that.

And to the extent that they're looking for the possibility that some other study was either in the possession of the debtors, the only way for us to look for that would be to have some guided search. And they have asked us to now -- all the materials that were provided to the UCC, which includes information from over 50 custodians going back in many cases more than 25 years, which resulted in us producing 680,000 documents to the UCC, of which they ran their search terms through. And we didn't tell them which search terms to run or not run. They were able to take a look through. And that produced I think 260,000 of the Debtor's documents.

And so to the extent that they believe that there are other studies out there, it is likely that those studies or references to them would be contained within the results of the material that they've already provided. And I do not believe they've completed a review of those materials. And we would ask that to the extent that we're back at this and I do think that, obviously Your Honor is correct, this is not a matter for Rule 2004. But to the extent we're back here even in another context, the information that's being sought should be informed by the review of the material they already have access to.

With that, unless Your Honor has any further questions, I will end my remarks there at this time.

THE COURT: Well, I do have this question. I've been assuming, but maybe I'm wrong about this, that there is a person or maybe a department at the debtors that in essence has responsibilities for these types of documents and that enables the Debtors to state in their response to the March 19 request the statements that they make in Paragraphs 19 through 22, including Footnote 15, which states that, among other things, there simply is no repository of information or studies not submitted to the FDA.

So is there an archivist or a department that is responsible for keeping such studies?

MR. MCCLAMMY: It is our understanding that this would be included in the regulatory affairs function. That being said, Your Honor, I'm not sure that it is one particular person. We have over the course of the year-plus in addressing the inquiries for the NAS Committee consulted with a number of both present and former employees to provide the information that we have provided. And --

THE COURT: Well, but I think we need to have the equivalent of a 30(b)(6) to be the person who is deposed on this as to the Debtor's efforts to comply with the discovery requests and their document retention pertaining to these

requests.

MR. MCCLAMMY: And is Your Honor thinking that --

THE COURT: I completely agree with your statement, which is consistent with the chambers conference we had on this late last summer that before one makes the argument that something hasn't been produced, the documents that have been produced, including through the production to the Creditors' Committee, need to be searched. And if there is a belief that additional searches would be warranted, I think it's incumbent upon the parties to discuss additional search terms that weren't used before. And I say that by saying both parties, both sides on this. And I don't have the impression that that's been done yet.

MR. MCCLAMMY: Thank you, Your Honor. And just one question regarding the deposition.

THE COURT: Well, we can get to that in just a second.

It may be that this was brought on, and it was brought on a request for an expedited hearing because of some relevance to the parties' discussions over the disclosure statement. But frankly, that appears nowhere in the pleadings. And what I'm being told by three or four different counsel on the phone didn't make a whole lot of sense. So unless it can be put in a more focused manner, I don't want to proceed today and run the risk of tripping

over the Part 7 rules for contested matters, which would be a claim objection, as opposed to going ahead with Rule 2004 discovery. Other than I think -- because I believe this is important -- having at least the best-situated person be deposed to the Debtor's document retention and document production with respect to the specific categories of information sought in these requests. That does not include information held by third parties. That type of request needs to be made of a third party, obviously. But requests pertaining to information in the Debtor's possession, custody, or control.

Now, Mr. McClammy, you were going to say something about the deponent or the deposition?

MR. MCCLAMMY: Just one question, Your Honor. And that is whether Your Honor is envisioning kind of a sitting deposition or if it's to be done by, for example, a deposition by written questions that we can respond to and have a response done under oath. My only concern is an unfocused effort to kind of go beyond the scope of just mere document retention issues on what should be a fairly straightforward endeavor.

THE COURT: All right. Well, I don't know. Have the parties discussed that all?

MR. CREADORE: No we haven't, Your Honor. And I think -- this is Don Creadore, by the way, speaking on

behalf of the NAS Committee. And I would prefer that the parties do discuss that prior to making any representations as to how to proceed. But our initial inclination would be that we would want an actual examination and not done by written interrogatories.

THE COURT: Okay. That's fine. You can discuss that. I mean, one of my problems with the two motions was that it wasn't really clear to me what documents were being sought. So I think even if the deposition is live and in person, although you all should discuss whether live and in person means by Zoom or literally in person. I think you should narrow down what documents or categories of documents you're talking about so that the person who is being deposed can prepare herself or himself with sufficient information to be ready to answer those questions, which would include potentially and probably likely talking to other people at Purdue.

MR. CREADORE: That's all sensible, Your Honor. And I suspect ourselves and the Debtors can work to some type of amenable understanding going forward.

I would like the Judge to note though that yes, we have been given many, many documents, terabytes of documents. But yet having to go through them in a workman-like fashion creates quite a burden. Many different levels of protocols to get the documents. And even the last

instance when we talk about the company core data sheets, of which we know by reference to its table of contents in one of the exhibits we submitted, there's no less than 13 burdens. So, understandably, we ask them for providing copies of versions 1.0 to version 13.0, for example. And the response was, well, you have all those documents, and here are the Bates ranges for them. And that may be suitable, but I will let you know that going to each Bates range and dragging down these documents and certifying that they are the proper and accurate documents certainly seems to be an extra added step. And would seem to be not a great burden for the Debtors since they do maintain we think (indiscernible) records that they at least --

MR. MCCLAMMY: I'm sorry, Your Honor, if I may --

THE COURT: But that's -- no, no, you don't have to. That's the responsibility of the party taking discovery. You know, this is a committee made up of lawyers, litigators who take discovery. You could do the search term for the CCDS. You know, if you want to rely on the debtors to respond, I don't get it. That's like asking them again. Search the documents for the term. That's what they would be doing. Company core data sheets.

MR. JOHNSON: Kevin Johnson, Your Honor, the documents are not in this collection. The NDL documents only included those documents that were provided in support

of those studies in support of the new drug application.

MR. MCCLAMMY: I'm sorry, Your Honor --

THE COURT: But I was responding to the prior statement by I think Mr. Creadore that it's burdensome on the NAS Committee to search for those documents, that it's even burdensome to read the documents identified with the Bates numbers. Yes, discovery is burdensome on both sides. But the burden to read what's already been produced is on the party to whom it's been produced.

MR. MCCLAMMY: And Mr. Creadore is well aware that in addition to providing the Bates numbers for the CCDS, we also provided one copy of the actual documents themselves and provided that to them over a file-sharing website and then provided the actual PDF when they were having trouble with the site. So it's not the case that we're only providing Bates numbers. We've oftentimes provided the actual documents themselves.

THE COURT: But I guess -- I mean, that's fine. That's nice. But I just -- you know, yes, this is an expensive process. When you ask for a lot and you say I want everything that could potentially cover the subject, that's what you get. And then you have to search it.

MR. CREADORE: This is Don Creadore. I appreciate your concerns, Judge. And it wasn't meant to create an issue about burdens, by the way. It was just more

conversational. So my apologies we went --

THE COURT: Well, I thought you were asking me to rule on something, and I just did. All right? So I did.

MR. CREADORE: Thank you.

THE COURT: All right. So is everyone clear about what's to happen next? There should be a meet and confer where you talk about the subject matter, namely the documents that you want to have confirmed have been looked for. And the physical nature of the deposition, whether it's interrogatories or live deposition. And if it's live, whether it would be conducted remotely or in person.

And then if you want to brief the issue as to the applicability of Rule 2004 to the parties to the disclosure statement. And the treatment of the PI claims that are NAS claims, you need to separately brief that and get a hearing date on it. Although perhaps the deposition will resolve that issue. Thank you.

MR. HUEBNER: Your Honor, Marshall Huebner. Just one question from my end. I think that when you had ruled a little while ago, you said that they first had to finish going through the documents they already had and actually know what they had and didn't before they would then proceed to a deposition. I hope that that also stands as part of the ruling.

MR. CREADORE: Your Honor, if I may be heard. The

enormity of the documents that have been produced I think doesn't mandate that we provide that type of representation. I know we will have a focused examination on the topics that are of most interest and required for due diligence on behalf of PI claims of NAS children.

THE COURT: Well, I think -- look, you're going to be asking questions of this witness like what have you done to search for a -- I forget the term --

MR. CREADORE: Toxicology study?

THE COURT: A company core data sheet, series of drafts. And I think that I can't imagine anyone asking that question and being prepared for a deposition without having already searched the documents that have been provided for that term, similarly.

MR. CREADORE: Agreed.

THE COURT: So I just -- this deposition is only going to happen once. So if there's, again, a question for the witness about a central depository in Connecticut, I can't imagine asking that question and being well-informed to follow up on it unless you do the search of the documents that have already been produced for those terms. But again, I'm not going to direct another deposition if that -- you know, if you say, well, now we've searched and we have more questions. That's just backwards. So I'm assuming you will do targeted searches -- if you haven't already, maybe you

have -- for each of the types of documents you want to follow up on to verify the statements that are in the Debtor's response that they have diligently looked for and provided everything that was responsive.

MR. THOMPSON: Yes, Your Honor. This is Kevin Thompson. We have done said searches. We continue to do them. And we have --

THE COURT: But if you're continuing to do them, you haven't done them yet. You ought to finish it and have the deposition when you're done. Otherwise it's a waste of time.

MR. THOMPSON: They gave us two terabytes of documents, Your Honor. And --

THE COURT: That's why you do searches. That's why you do (indiscernible) searches.

MR. THOMPSON: We are employing machine learning, typical searches, artificial intelligence, predictive searches, predictive coding. We are pulling out everything, and we have been. And we will be prepared for this deposition, Your Honor.

THE COURT: Okay, good. That's fine. That's what I wanted to hear. Okay. All right.

So, Mr. Huebner, I'm assuming they will do it. If they haven't, it will be in large measure a wasted deposition. But I don't think these lawyers will do that be

they’re dedicated lawyers.

MR. HUEBNER: Thank you, Your Honor. It sounds like we’ve all heard what we need to do today.

Your Honor, does that bring us to number two, or are there other items that other people would like to further discuss on the NAS “2004 motion”?

THE COURT: I think that brings us to number two then.

MR. HUEBNER: Okay. So let me turn the podium over to Mr. Paul Breene. Your Honor, just so the Court is aware, just as a quick stage-setter for the pretrial conference, the insurance assets are obviously of extreme importance as a valuable asset of the estate. As the Court surely remembers, they are the only item in this case where the Debtors agree to share standing, you know, temporarily with the AHC and the UCC. You know, obviously showing respect and involvement to two of our core creditor groups in a somewhat unusual way. And this is I think the next foray forward on insurance issues. Davis Polk is not handling this today. And so if it is okay with the Court, I would turn the podium over to Mr. Paul Breene, who I think is going to kick off for the company and creditors.

THE COURT: Okay, that’s fine. So just to be clear, we are here in Purdue Pharma L.P. against AIG Specialty Insurance Company, et al, Adversary Proceeding 21-

07005. And this is the initial pretrial conference in this adversary proceeding. There is a scheduling order in place. It's a rather short one, and it's been agreed by the parties, which reflected the adjournment of the initial conference in light of, among other things, the adjourned or extended date for the defendant to answer or move, which was yesterday, and also laid out a date for the plaintiffs to oppose any such motions and then the defendant's reply to those opposition papers. That's in a March 5, 2021 scheduling order.

So I have read I believe the letters from certain counsel, including from Mr. Breene from Reed Smith and counsel for various insurers, including Mr. Schiavoni from O'Melveny and Ms. Marrkand from the Mintz Levin firm with respect to their views as to what should be accomplished today.

I am also aware that a number of motions were filed yesterday consistent with the scheduling order either joining in an earlier motion seeking withdrawal of the reference with regard to this adversary proceeding, a motion for a stay in light of the arbitration provisions and various insurance agreements with regard to certain of the insurer defendants.

So with that, I just want to let you know what I've been through as far as reading material. So, Mr.

Breene, you can go ahead.

MR. BREENE: Thank you, Your Honor. Paul Breene, Reed Smith, insurance counsel to the Debtors. I just want to make sure you can hear me well.

THE COURT: I can hear you fine, thanks.

MR. BREENE: Okay. Thank you very much, Your Honor.

As Your Honor is aware, you entered the stipulation granting joint standing to the Debtors as well as the Ad Hoc Committee of Governmental and Other Contingent Litigation Claimants, as well as the Official Committee of Unsecured Creditors. So the three constituencies, all are plaintiffs in this adversary proceeding. While I will be kicking it off and we'll be happy to respond to Your Honor's questions, I know that at the very least Rick Leveridge of Gilbert representing the Ad Hoc Committee and potentially Warren Usatine of Cole Schotz representing the UCC may also be chiming in with respect to this matter.

Your Honor, our -- when you granted the stipulation seeking joint standing for the three constituencies, that was on January 20th, you specifically said there's no reason for any delay in resolving the Debtor's insurance claims. And we couldn't agree with you more. We feel that this matter should move forward as expeditiously as possible.

As Your Honor is aware, we are seeking approximately $3.3 billion worth of insurance proceeds. And that is a -- as Mr. Huebner has indicated and as all counsel in the January 20th hearing indicated, that is a very significant asset of the estate and has significant ramifications for the implementation and confirmation of the plan. We don't think there's any basis for delaying in any way proceeding with this matter. And as a result, we have sought to, pursuant to Your Honor's rules, we sent the insurance companies, back on March 17th, the week before the originally-scheduled conference, a proposed scheduling order. And that scheduling order would have a close of discovery six months after this Court decided the various motions which of course were expected to be made at the time and now have been made as of yesterday, or January 28th. We also asked that a final pretrial conference be scheduled for June 28th -- or June 16th, I'm sorry, or as soon as the Court could hear it.

THE COURT: June 16th, 2022, right?

MR. BREENE: Yes, I'm sorry. January 28th, 2022 and June 16th, 2022, yes. And that schedule that we proposed, Your Honor, did, you know, we felt take significantly into account the fact that we knew that the insurance companies intended to make the various motions that they made yesterday. It took into account the briefing

schedule that had been agreed upon and it took into account some time for Your Honor to decide those, to hear those motions and decide them. And that is why, frankly, we proposed a schedule which we believe is significantly longer than ordinary bankruptcy adversary proceeding schedule would go. But it did recognize that there would be some preliminary motion practice in the beginning.

I'd like to get to the various arguments that have been made in which the insurance companies have sought to delay this matter.

As an initial matter, as the Court is aware, on March 22nd, or actually I guess it was the Friday before, the insurance companies sent Your Honor a letter seeking to adjourn the scheduling conference. And Your Honor denied that request.

Thereafter we had a meet and confer on March 22nd a couple days before the originally-scheduling conference, pretrial conference, in which we sought to get some agreement on a schedule for discovery and the final pretrial and trial of this matter.

It became clear at the time that in fact the insurance companies would like to not schedule anything but in fact would like to wait until all of the motions have been decided, both the motion to withdraw the reference, which is currently pending before Judge Karas, as well as

the motions that were expected at the time and now have been made to stay this matter pending arbitration and also to dismiss the matter on the grounds of lack of personal jurisdiction which were made by certain of the foreign insurance companies.

For various reasons, Your Honor, we don't think that any of those motions or the pendency of the motion to withdraw the reference warrant any delay whatsoever in the schedule that we have proposed. And just to briefly touch on the issues, a significant issue that the insurance companies have relied upon is that they should not be subjected to discovery at this point if they are seeking to stay the matter, you know, in favor of arbitration or if they are seeking to have the matter dismissed because the Court lacks personal jurisdiction.

In our view, discovery should go forward, Your Honor. And we of course don't intend, and I know the Court would not intend to prejudice those arguments. But it is a simple matter we think that the Court could direct that discovery move forward and that that discovery and parties' participation in that discovery would not be a waiver of any of their jurisdictional or defenses. I think that that could be done.

And the reality is, Your Honor, they've indicated that if they get dismissed and they go on to arbitration or

elsewhere that the discovery that we're seeking would be a waste of time. And in fact -- and that same argument has been made with respect to those insurance companies that have either made or joined the motion to withdraw the reference. And, Your Honor, we feel nothing to be further from the truth. Getting this thing moving, getting close to a decision on the insurance asset is enormously important, as Mr. Huebner has said, as all the counsel in the various constituencies seeking this insurance have said, it is enormously important and central to the plan and will have a significant impact on both the allocation and timing of estate proceeds, you know, once that gets to the (indiscernible). And we feel that there is no reason to delay this matter by several months. We think it will all end up here before Your Honor because we think it belongs here.

But even if that is incorrect and ultimately this matter splits into what the insurance companies would like, which would be 16 separate arbitrations and another matter before the district court, none of the work that gets done now will be a waste of time. And therefore on that matter we think the Court should move forward.

Another issue that's been raised as a reason that the Court should not move forward is that some -- and I believe it's as of last night maybe four or five -- of the

insurance companies will be demanding a jury trial. The fact of the matter is we will contest that they have a right to a jury trial with respect to this matter. But even in fact if this Court determines that they have a right to a jury trial, as the Court has indicated and ruled in the Windstream case, even if this Court cannot constitutionally make a final determination, the Court certainly can make findings of fact and conclusions of law and the Court can submit this matter to the district court right at the end in a trial-ready manner so as not to have delay and so as to have been able to handle the case management and all of the preliminary matters in a manner consistent with moving forward with the plan and the estate.

So the other matter, Your Honor, is we of course believe that this is a core proceeding and it will be in front of this Court. And we are in the process of briefing and opposing Liberty Mutual's motion to withdraw the reference, which our response to that at this point is due at the same time that our oppositions to all the other motions that were filed yesterday is due, on May 3rd. And because we believe it's core or we think it will all remain before this Court -- and, Your Honor, even if it's not core or even if the Court rules that there are issues that are going to be tried in front of a jury and therefore the final adjudication is beyond this Court's constitutional

jurisdiction, we think the best place for this matter and the place where it will end up residing is before this Court. And therefore, we ask that the Court enter our scheduling order as we have submitted it. And it was submitted with my letter on March 22nd as Document 32 in this adversary proceeding and set a briefing deadline and the final pretrial conference.

And with that, Your Honor, I would ask that my co-plaintiff counsel in this matter, Rick Leveridge, be allowed to chime in and add whatever he thinks should be added.

THE COURT: Yeah, go ahead. You may be on mute. I don't know. Or you may just not want to add anything, which is fine. All right.

Mr. Breene, you answered one of my questions, which is whether the motion to withdraw the reference that was filed in March has gone to the district court and been assigned to a district judge. And you've confirmed that it's been assigned to Judge Karas. I did have some other questions though.

Your proposed pretrial order contemplates close of discovery in the adversary proceeding six months after a ruling on a motion to dismiss. I'm assuming that would also -- well, you also say or a date in January of 2022. In any event, you're contemplating six months of discovery after the ruling on the motions to dismiss, correct?

MR. BREENE: Your Honor, yes, although we put an end date on that of January 28th. But of course if the court felt that a minimum of six months and potentially with all of these motions which are -- I think the final briefs are due May 20th. And granted there's a lot of motions and it may take a little longer for this Court to hear them and decide them. And I think that certainly from the Debtor's perspective, and I won't speak for the committees, but I would assume that they would agree that if it took a little longer for the Court to decide those motions and all of those motions, we would extend that January 28th date so as to allow six months of discovery.

MR. LEVERIDGE: Your Honor, this is Rick Leveridge on behalf of the Ad Hoc Committee. I think I had some technical difficulties before. Can you hear me?

THE COURT: Yes. I can hear you fine now. Thanks.

MR. LEVERIDGE: Thank you. I'm very sorry for the -- I'd just like to add to what Mr. Breene just said. First of all, we do envision discovery starting now. So the fact that we used the dates of the earlier of six months from when you rule on the motions or January 28th, it wasn't our intention, and I certainly don't want to have any confusion for the Court, we envision that discovery would proceed now, not wait until you -- because we do think that discovery

should proceed now. And the Debtor in fact has made clear to the insurers that once the insurers sign the protective order in these cases, without prejudice, as Mr. Breene said, to their position on personal jurisdiction or arbitration, that the Debtor will provide a substantial number of documents to them to get the ball rolling. And of course we would proceed with discovery as appropriate in the time between now and the rulings on the motion.

So it's not a -- we weren't going to start as of the time of your ruling. We put that in, frankly, to engage the insurers in a negotiation on a schedule because they had already indicated that the motion was a significant milestone for them. Frankly, unfortunately, as Mr. Breene said, we had the meet and confer. We provided them with our schedule. They refused to even engage on a schedule. So I want to reinforce Mr. Breene's submission that we believe that the schedule we have submitted, that the insurers have refused to provide an alternative to, should be the schedule that the Court enters.

THE COURT: Okay. So this leads to my second question, which is really a two-parter. First is in my experience, insurance litigation is largely document-based, if not entirely. Each side argues the plain meaning of the documents at issue. I'd like to have a better sense from the plaintiffs as well as the defendants as to what sort of

discovery is contemplated here and why it would take potentially eight or nine months.

MR. LEVERIDGE: Your Honor --

MR. BREENE: Your Honor --

MR. LEVERIDGE: Go ahead, Paul.

MR. BREENE: Your Honor, this is Paul Breene from Reed Smith again. Your Honor, we don't disagree with you that it doesn't -- it shouldn't take that long. I mean, we were -- you know, the schedule we proposed was, as Mr. Leveridge indicated, to try to engage and come to an agreement. We are making an assumption on what the insurance companies would want. I mean, as Mr. Leveridge indicated, we are -- it's our intention to make, you know, literally tens of millions of documents essentially available as soon as the insurance companies are willing to sign the acknowledgement that is required under the protective order in place in this case.

And again, one of the objections to that has been that they can't sign the acknowledgement because that would subject them to personal jurisdiction or somehow prejudice the arbitration arguments. And our view on that, Your Honor, is that this Court can easily order that such a move which would expedite discovery enormously, at least from the policyholder, the Debtor's perspective, would not prejudice those claims.

And what typically takes a long time, Your Honor, is a lot of discovery against the policyholder here, the Debtor. But in this instance, which is somewhat unique, virtually every document under the sun at Purdue, at the Debtor, has either been produced or certainly is an electronic format. And we believe we can get our discovery out essentially very quickly. We assume the discovery that the insurance companies will want will be relating to similar matters that were produced in the underlying cases as well as specific to the insurance. We are prepared to produce those almost immediately.

The discovery that we will be seeking from the insurance companies -- and I certainly will allow Rick Leveridge to expound on this as well -- would be their claims files and their underwriting files essentially. Also potentially how they have treated other opioid policyholders with similar claims.

But, you know, it is a finite amount of discovery. It's pretty specific. And the only other aspect that I can see, our seeking is -- you know, again, those motions came in yesterday. Among them is the motion with respect to personal jurisdiction. We believe we have enough documentation and enough information to successfully oppose that motion. But again, having not been through that motion entirely, it may be that some personal jurisdiction

discovery of those insurance companies that have made the motion to dismiss on personal jurisdiction grounds may be required.

And, Rick, if you had additional...

MR. LEVERIDGE: I don't have anything additional other than to say that we would -- once we've reviewed the briefs that came in last night, if there's jurisdictional discovery, we would be prepared to initiate that as soon as possible.

THE COURT: Okay.

MR. SCHIAVONI: Your Honor, this is --

THE COURT: Go ahead.

MR. SCHIAVONI: Your Honor, this is Tancred Schiavoni for O'Melveny for the arbitration insurers. May I be heard at this point?

THE COURT: Well, I have one other question before I turn to the defendants, which is a subset, I think it's about half of the defendants, apparently don't have the personal jurisdiction defense or lack of personal jurisdiction defense. And they may well be overlapping to some extent. But, again, a significant number of defendants don't have arbitration provisions in their policies, or at least have not sought a stay in light of such provision.

Did you discuss in your meet and confer, and if not do you have views on taking discovery of the parties

that are not subject to the arbitration issue or the personal jurisdiction issue and not as to the others?

MR. BREENE: Your Honor, we -- I'm sorry, Paul Breene again, insurance counsel for the Debtors. We did discuss that. In fact, it was raised by one of the insurance company's lawyers. And we responded that we would be seeking discovery as to all insurance companies, those with the arbitration clauses and those with personal jurisdiction issues, as well as those without.

It is not our intention to set up sort of a two-tier discovery process here. We think that discovery should move forward as to all insurance companies. We think the Court can easily render the issue that has been raised as to participation in discovery when the arbitration, insurance companies, and personal jurisdiction insurance companies feel that they may not ultimately be before the Court and protect those rights so that -- and the discovery would move forward. And the discovery would be used. I mean, the discovery would be used in -- if in fact there are ultimately this insurance coverage adversary proceeding pending here and 16 arbitrations pending around the world, the arbitration insurance companies will still use the same discovery and it will have already been done. And therefore, it will never be a waste of time and it will move this process forward even if it is delayed by the fact that,

you know, certain of these insurance companies end up in arbitrations around the world.

THE COURT: Okay. All right. Mr. Schiavoni, do you want to go ahead?

MR. SCHIAVONI: Yes, Your Honor. Thank you very much. It's Tancred Schiavoni from O'Melveny.

Your Honor, I represent Arch Bermuda and Chubb Bermuda here. But the insurers have tried to work together to present as little argument as possible. So what we've done is I will speak on behalf of my two clients, but we submitted a letter to you on behalf of those insurers that have arbitration, mandatory arbitration provisions and personal jurisdiction motions. And Kim Marrkand will speak to you on behalf of the other insurers.

There are 13 insurers that have mandatory arbitration provisions. They are identified in the letter I submitted to you. 11 of those insurers have also brought motions to dismiss based on lack of personal jurisdiction. These are insurers that by and large are based in Bermuda or London where all of the insurance process, the underwriting, placement, brokering of the insurance takes place in those cases.

These insurers represent -- it's about half of the 25 defendants in the insurance adversary proceeding. And, Your Honor, I submit to you really briefly and I'll try to

get right to the point why it is that especially with regard to these insurers, it's premature to go forward. But really on behalf of all the insurers, it's premature.

First, Your Honor, we negotiated with Mr. Breene a briefing schedule for these motions. We made a number of concessions to make sure that that briefing schedule was prompt. It is a prompt schedule. The motion on the arbitration to stay based on the arbitration, mandatory provisions, and the personal jurisdiction provisions sets a schedule where they be fully briefed by May 20. That's a short schedule, it's prompt. Those motions will be fully briefed very much in the near term.

The same is true with respect to the motion to withdraw the reference. They're going to be briefed very quickly. We have a district court judge assigned, and I'm certain he's going to get to those motions quickly. Second, Your Honor -- so this is not an effort to delay the case by any means at all.

Second, in light of the nature of the motions that are before the Court, it really would be prejudicial to go forward and set a pretrial order at this time rather than after May 20, and particularly one that deals with far-reaching discovery, which Mr. Breene, to his credit, has been very candid that that's exactly what he seeks here. The arbitration provisions, the mandatory arbitration

provisions for the contracts, one of their very purposes is to keep the insurers and the policyholders that agree to them from being embroiled in this very kind of type of discovery. So to have them submitted to the discovery before their motions could be heard is prejudicial, Your Honor. And at a bare minimum we would ask --

THE COURT: Can I interrupt you on that point?

MR. SCHIAVONI: Yes, Your Honor.

THE COURT: Have the two sides discussed what discovery they believe would be an element of the arbitration proceedings if the litigation were stayed as to those defendants in deference to the arbitration?

MR. SCHIAVONI: There's not been meet and confers on that issue, Your Honor, as the parties have focused on trying to bring these motions forward as fast as possible.

THE COURT: Well, I mean, I guess what I'm hearing is the debtors are offering to provide you a head start if you want it on a range of documents that probably would far exceed what would be required in the arbitration, but you would have a head start on it. It wasn't really clear to me what they would be seeking from your side pending a ruling on the stay motions which would probably come in early June. I am assuming it could be pretty narrowly tailored, at least during that period, to what would be forthcoming in any event in the arbitration. So I don't see why the parties

wouldn't discuss that at this point.

MR. SCHIAVONI: Well, Your Honor, I think there's likely to be significant disagreement about what the nature and scope of the discovery would be permitted against the carriers with --

THE COURT: No, no, no. Because you haven't even talked about it. So I think you've got to talk about it.

MR. SCHIAVONI: We would -- Your Honor, to be clear on this, we would ask at a minimum that we be able to brief that issue if we do not have agreement on it, and that we be permitted --

THE COURT: Oh, of course. Of course. That's a separate point. But I don't understand why people don't think practically. If the rationale is that you would be prejudiced by having discovery go forward pending a ruling on the stay motions, I guess it is conceivable that under the applicable arbitration rules, and different insurers have different rules, there would be literally no discovery. But I find that a little hard to believe. And I think this group of litigators probably knows pretty well what is a definite amount of discovery that would happen. And that's all that I would have in mind during an interim period that people should reasonably agree on, as opposed to discovery that would be up to the discretion of the arbitrators. Which I agree with you, it would be prejudicial to have

taken place before a determination of the stay motion.

MR. SCHIAVONI: Judge, even with respect to the discovery that has been volunteered, look, I appreciate the notion of trying to reach practical ways to go forward. But even with respect to that, the notion is that the foreign defendants here that believe that they have motions for lack of personal jurisdiction, Mr. Breene is asking them all to submit themselves to the jurisdiction of this Court by entering into the protective order in this Court, to participate in that discovery. And really what we're talking about here is a relatively short period of time to get these motions fully briefed before Your Honor or before the district court. And, you know, the deciding court at that point would have a much better sense of what the issues are with regard to the arbitration provisions. And we're really just talking about less than 60 days to do that. So those would be two of the reasons.

And the third reason, Your Honor, on why we think that the scheduling order at this time is premature is we do have a motion to withdraw before the district court. Liberty Mutual has moved on that. The arbitration insurers have brought a separate motion to withdraw the reference. We join in Liberty Mutual's motion. We feel that the reference should be withdrawn in its entirety. But the arbitration insurers here have really separate and

independent grounds to withdraw the reference based on what are really sort of somewhat unique facts here, but facts that other courts have looked at involving the Federal Arbitration Act, application of the New York Convention, which is a treaty, and the very, very strong deference that the Supreme Court has given to enforcement of arbitration proceedings, especially involving international treaties, as this one would here.

Your Honor, the motions on arbitration are well-founded. In the FM Global case as well as in ResCap, Judge Glenn and Judge Lane, involving very similar groups of insurers, you know, all stayed in favor of arbitration. We think these are well-founded motions.

But the effort here to sort of move forward in light of just a May 20 schedule is not really borne out by what the overall context of this case is. Importantly, the plan of reorganization is not contingent on insurance or the availability of insurance proceeds. Everybody went into the plan eyes open on that issue. It's quite clear from the plan that the plan will be confirmed before there is a final order in the adversary proceeding. There is not a need to move forward on a schedule here that tramples the substantive rights of the arbitration insurers, Your Honor.

We're really just asking for what we think is a very short delay so that when either Your Honor or the

district court decides this motion or enters a discovery order, it's got before it all of the motions that we have, has a better understanding of the proceedings, and that whatever order is then entered is entered with that knowledge and that it's a good order based upon the issue fully being briefed before the Court. We're not seeking any real delay here. We'd have we think a decision on this very quickly after May 20. Thank you, Your Honor, for listening to me.

THE COURT: Okay. I appreciate that you've tried to coordinate this. I don't know if anyone else wants to speak from the defendant's side.

MS. MARRKAND: Yes, Your Honor. This is Kim Marrkand. I represent Liberty Insurance Corporation. For the record, Liberty Mutual Fire Insurance Company and Liberty Mutual Insurance Company, Your Honor. And I appear today with my co-counsel, Mr. (indiscernible). Thank you very much, Your Honor, for the opportunity to be heard.

So we are not, pardon me, one of the parties that is in arbitration here or a party that's raised personal jurisdiction as Your Honor had identified. But I think it's important to give you a little context about who Liberty Mutual is, Your Honor.

And we issued approximately 23 prepetition policies to Purdue Pharma. And, Your Honor, they span the

years 2003 to 2017. And we believe that none of them provide coverage. Really just to cut to the chase, because all of our policies exclude coverage for any Purdue products. And, Your Honor, when I say that, I also mean the tower above us, all of the other excess insurers, call them the non-arbitration insurers. And this is an unusual case. And we know -- you know much better than me, Your Honor. You have been steeped in this case since it was filed. But one of the things, and it was even telling in the earlier motion discussion, Liberty Mutual and all of the other insurers, whether arbitration insurers or not, none of us have been involved in anything to do with Purdue's bankruptcy. And I know Your Honor knows the plan. I know you know very much about the mediators. All of that has taken place without Liberty Mutual or the other insurer. We have never been involved in any of that. So we are neither a part of nor a problem that needs to be addressed for the plan to be confirmed, as Mr. Schiavoni said. And I think, Your Honor, this is a very unusual case where expediency for expediency's sake just doesn't justify a discovery order at this time.

And what our recommendation is, Your Honor -- and I know it is a big recommendation to the Court -- is that you defer entering any pretrial order until we know who will be in the case.

THE COURT: That's contrary to how the district courts handle motions to withdraw reference and share the work with the bankruptcy judges over the last 15 years.

MR. MARRKAND: Your Honor, I'm sorry, I didn't mean to interrupt.

THE COURT: I mean, unless a district judge has a real yen to take on an entire case, the clear practice in the Southern District of New York is to let the bankruptcy judge manage the adversary proceeding unless and until it gets to a trial.

MR. MARRKAND: Your Honor, and we are very familiar with that and we know that. And that's why we understand that in those cases though, my understanding of them, Your Honor, is they were not Purdue Pharma like. And what I mean by that here that here, by that, Your Honor, is that this is, as you know, a case where Purdue Pharma's solvency is not at issue, where plan confirmation does not turn on the assets that may or may not be recovered. The settlement, the mediated settlement had nothing to do with the insurers. And respectfully, Your Honor, I think the norm isn't this case. And that is why, yes, often the district court does defer to the expertise of the bankruptcy court.

But here, Your Honor, that's why what we would respectfully request at a minimum is -- Liberty Mutual filed

its motion to stay. We would like you to see that, Your Honor, and why this case is different.

Under the briefing schedule, --

THE COURT: I'm sorry. You filed a motion to stay or a motion to withdraw the reference?

MR. MARRKAND: Both, Your Honor. The motion to withdraw the reference has been assigned, and Judge Karas has that. We were waiting to file the motion to stay this action until we could see if we could get on your docket for May 20th. And --

THE COURT: I'm sorry. What is the basis for a motion to stay?

MR. MARRKAND: The motion -- because, Your Honor, we believe that this is the exceptional case where the motion to withdraw the reference could very well be granted. And what we are asking --

THE COURT: I'm sorry. Maybe you just didn't understand me on this point. The allocation of work between the district courts and the bankruptcy courts where there is a motion to withdraw the reference is not a question of deferring to the bankruptcy judge's expertise in bankruptcy matters. It's an allocation of the work that we do. The district courts -- and I know for a fact that the district judges that sit in this courthouse are really busy. And they decide really important matters, such as whether people

go to jail or not for years. And generally speaking -- and it doesn't matter whether it's a bankruptcy matter that's important to a case to the extent that it is core (indiscernible), or a simple litigation where the debtor is seeking to augment its estate, will defer to the bankruptcy judge to manage the case until, if it ever does, get to trial.

MR. MARRKAND: Yes, Your Honor. We recognize that.

THE COURT: This is -- so I guess you can file a motion for a stay to be heard sometime next month. But to me, that seems like a waste of time. I understand clearly a motion to stay in light of the Federal Arbitration Act. That's not a waste of time. That's important. And I appreciate that it was done promptly and that there is a prompt briefing schedule set on it.

But a motion to stay pending an argument or on withdraw the reference, give me a break.

MR. MARRKAND: Yes, Your Honor, I --

THE COURT: You know, there is a point where insurers really do have to be careful about denying coverage. And delay can be denied.

MR. MARRKAND: Your Honor, I can -- I'm not tone deaf to the frustration from the bench. I appreciate it and I understand it. But I would like to say in terms of delay,

if it would consider just one thing, which is the insurers have been here all this time. That's why I mentioned that our policies to back to '03. You've had this bankruptcy petition in front of you for a long time. We never got any notice at all, Your Honor.

The delay -- so I know I'm -- I hope I'm not trying your patience, but I hope the exasperation might be refocused on the debtors here, who are very strategic, Your Honor, who got everything lined up, who came before you in January as if to say oh, we forgot about the insurers. Absolutely not true, Your Honor. They waited until they could do -- and that's a strategic decision. And they are entitled to file their adversary proceeding whenever they want. But in terms of delay, Your Honor, we haven't delayed. As soon as we got served, we were on the phone with Mr. Breene. And I think, with all candor, the parties have had a very cordial and professional relationship. And they have discussed in good faith how to move this along. And that's why we tried to do an expedited briefing schedule.

We would be -- I understand too -- all of the defendant insurer, Your Honor, understand the uphill battle we faced to convince you, frankly, about the merits under this particular set of circumstances that a stay may be warranted.

All I would ask is the briefing on our motion to stay closes May 20th. That is a date -- an omnibus hearing date. We would be more than happy, Your Honor -- we filed our motion. Debtor's response, or plaintiff in this case, response is due May 3rd. And our reply is due May 20. We could easily move that up a week, serve our reply on May 14th, and then be in front of you on May 20th. And we also understand, Your Honor, very much about the burden on the district court. We understand that.

And we would not be here -- nobody would appear -- I can't speak for everybody. I know my client would not let me appear before you as an officer of the court and make a specious or silly argument unless we had very strong grounds. You may decide, Your Honor, that they're not grounds enough. But I do think this is the extraordinary case that merits a close look by you. And that's why we've taken these extraordinary steps knowing, as I said, it's an uphill battle.

I think when we were discussing with plaintiff's counsel a scheduling order, what we were trying to do was say could we at least wait until we see if you, Your Honor, would consider staying this action. All of that could be resolved, I suspect, by May 20th. Because I suspect you will come on the bench if -- May 20th -- if we can get on your agenda that day, we were trying to work with chambers

to do that -- you will come prepared with a ruling. I think what we're trying to do here is understand what discovery needs to be taken of whom and by whom. And what we are trying to avoid, Your Honor, is chaos. Ten million -- I just heard, I think it was Mr. Breene maybe say tens of millions of documents. That's not a normal coverage case, Your Honor. We don't do that here. And we're trying to be practical using your word. And we know enough about you. You don't want us wasting your time. What we're trying to do is not waste everyone's time --

THE COURT: I don't understand why you are not discussing now, whether it's going to be taking place in the district court or here, what discovery would be warranted. Why don't you have that meet and confer right now? Why don't you have it in March?

MR. MARRKAND: Because, Your Honor, as Mr. Schiavoni said, we were trying to work out a compromise with the debtors. And they were very frank. They did not want to delay discovery. And so we came to what I would call an impasse. But we have certainly been looking at, for example, the protective order. And what Mr. Breene did circulate, it is a protective order I think you're very familiar with. It's the third iteration or the third amended protective order. It's approximately 45 pages long. And it deals with all of the other parties that have been in

front of you. Obviously none of the insurers. And one of the issues, Your Honor, is -- and please bear with me just for another minute to explain the significance of the protective order. If the Court, Judge Karas, were to withdraw the reference, we don't want to have a protective order in place that works in the bankruptcy court but involves all those other parties that seemingly imposes certain obligations on any new party. And there is some irony in the version of the protective order being provided to us. It specifically excludes insurers.

Now, I think we can work that all out, and we would probably have a new protective order. And we are more than willing to do that, Your Honor. But as Mr. Schiavoni pointed out -- and that's with the arbitration insurers. But for the non-arbitration insurers, Your Honor, we can definitely work with Mr. Breene on a protective order because we know we're going to need that in whatever forum we're in.

So to not monopolize the microphone, Your Honor, I appreciate that you heard Mr. Schiavoni and me. As I said, what we're asking for is your consideration in this extraordinary case under extraordinary circumstances for a delay. It is likely to be no longer -- no later I should say -- until May 20th.

THE COURT: Okay. I have a couple of questions

for the plaintiff's counsel. But before that, if anyone else on the defendant's side wants to say anything, I'm happy to hear you.

MR. KOEPFF: Your Honor, this is Paul Koepff from Clyde & Co. We represent Arch Re. It's an arbitration insurer and it's also an insurer moving for personal jurisdiction. Actually, the total number of insurers moving in arbitration are 16 of the 25, three more have filed an arbitration motion.

Your Honor, the only thing I'd like to point out is we would like a chance to put before Your Honor, and of course Mr. Breene can respond, the case law that demonstrates when someone has a personal jurisdiction defense, they're not obligated to get involved either (indiscernible) seeking document discovery or responding to document discovery. And similarly, there's case law that says there's no obligation that arbitration insurers filed such a motion to seek discovery or to provide discovery. And I think Mr. Schiavoni's letter, footnote, he cited one of the cases.

So the only request I would say is if the arbitration insurers, 16 of them, and overlapping the 11 personal jurisdiction insurers could put before Your Honor the case law that says there shouldn't be merits discovery until those motions are --

THE COURT: I don't think you need to do that. I'm familiar with those issues.

MR. KOEPFF: Thank you. And nothing further, Your Honor.

THE COURT: Okay. So going back to --

MR. MCNALLY: Your Honor. Your Honor.

THE COURT: Go ahead.

MR. MCNALLY: Daren McNally. I represent Chubb Bermuda with Tancred Schiavoni. Putting aside whether or not the personal jurisdiction questions whether or not the debtor can force us to participate in a US-based discovery before there has been a ruling on personal jurisdiction, I just wanted to point out that the Bermuda foreign are very unique and different from typical occurrence-based domestic policies and will give rise to very different issues such as whether or not there is an integrated occurrence, whether or not the insured has satisfied a maintenance deductible, the application of commercial risk exclusion. These are all very unique issues that really don't appear at all in domestic policies. So my only point is that discovery wouldn't even be the same. That's all.

THE COURT: Okay. All right.

MR. AUSLANDER: Your Honor, this is Mitch Auslander from Willkie Farr & Gallagher. We are counsel to a number of AIG insurers.

It's certainly very difficult to argue with the notion, as Your Honor suggested, that people should talk about whether there is any discovery. I think it will be difficult to reach agreement on it. But at least on behalf of my clients, we're perfectly happy to talk to Mr. Breene and the other plaintiffs about voluntary discovery. I think it's highly unlikely, with all due respect, that there can be an order requiring the arbitration insurers to engage in discovery, but we're certainly willing to talk about it.

But the point I wanted to make is you asked Mr. Breene before about the possibility of taking discovery from the non-arbitration insurers. And I agree with him that having two-tier discovery is probably not a good idea. We think that it will cause confusion, duplication. If anybody comes back into the case, do-overs. And given what Mr. Schiavoni and Ms. Marrkand said about timing, which we agree that we are on a relatively short timeframe, that it does make sense not to go forward with discovery and certainly not to tier discovery until those motions are decided. Thank you.

MR. CALHOUN: Your Honor, George Calhoun for Ironshore Specialty Insurance Company. I wanted to join in the comments of my colleagues and also just to point out that for one of my clients, Ironshore, we were before you more than a year ago with a motion for relief from stay and

were told that the debtors weren't ready to go forward. They very much intentionally put these issues off. The plan is not contingent on it and is fully joined in the arguments that it's reasonable to delay discovery until conclusion of the arbitration of personal jurisdiction motions, if for no other reason than the fact that a document dump of tens of millions or ten million -- it doesn't really even make a difference -- is an undertaking of a massive size and not something that would be targeted, which is really what, if we agree, we can discuss. But it's targeted discovery, not a document dump of over ten million documents from one of the larger bankruptcies in recent memory. Thank you, Your Honor.

THE COURT: Okay. This is a question for Mr. Breene or one of his colleagues. You are offering, and it sounds very generous, to provide the defendants with what you believe is sort of the outer limits of what they would ever want in the form of discovery promptly. But it is conditioned upon entry into an agreed protective order.

You said that you could do that with appropriate reservations to ensure that those who are asserting either lack of personal jurisdiction or a right to arbitration. But given that it's a protective order that would be enforced by the Court, how would you actually do that? Wouldn't they be submitting at least to the Court insofar as

that order was concerned and be bound by my enforcement of it?

MR. BREENE: Yes, Your Honor. I'm sorry. Paul Breene for the Debtors. Yes, Your Honor. I think what I was suggesting is that this Court potentially could use its equitable powers to enter into a special order, frankly, which would protect the personal jurisdiction and arbitration, insurance companies' claims and against any waiver based upon entering into a protective order. That was what I was suggesting.

THE COURT: Okay. All right. Well, let me tell you how I'm coming out on this. To me, 60 days is actually a meaningful time and should be used productively. And I'm very frustrated by the parties' inability to focus on how to use that time productively besides briefing the issues that are scheduled to be briefed before me.

Having said that, I do not believe that either side is suggesting a two-tier discovery process. And even if one did, I would be reluctant to have us go down that path. Which means that there are two important gatekeeping issues before me, at least I believe promptly before me.

The first is the argument made in a number of recently-filed motions to dismiss that the Court lacks personal jurisdiction over the movant. And the second is, again, the subject of a number of pending motions which

seeks a stay in light of the arbitration provisions in the applicable policies.

I am extremely reluctant, and I don't believe I need briefing on this, to direct discovery pending my decision on those motions. I will come back to what I believe should be done by the parties. And I think their failure to do it, even if I cannot compel them to do so -- and that issue remains open -- will be telling down the road in the conduct of this litigation, wherever it is conducted and potentially on issues regarding wrongful denial of coverage. But I'll come back to that.

I believe that the only discovery that needs to be taken on a compelled basis is fact discovery on the issue of personal jurisdiction. The parties should promptly meet and confer to discuss whether they intend to take the discovery, and of course that's the plaintiffs, and work out a schedule for doing so if they do intend to take such discovery.

If they cannot reach such an agreement, plaintiffs (indiscernible) defendants want that discovery, you can set up a discovery conference with me promptly and I'll resolve that issue.

Because of the inadvisability of doing two-tier discovery, those defendants who are not in the group that have arbitration provisions or assert a lack of personal jurisdiction in essence will get a free ride on compel

discovery until I decide those motions.

I want to be clear, however, the Court has continuing jurisdiction while a motion to withdraw the reference is pending. The case law is quite clear on that and the policy behind it is quite clear. One should not be able to bring a halt to litigation in bankruptcy court where the court clearly has subject matter jurisdiction while a motion to withdraw the reference is pending and being decided.

Moreover, although I will of course carefully consider a motion to stay pending a decision on withdrawal of the reference, as I've stated, the case law and practice of the Southern District argues strongly that in 99 out of a hundred such cases, the district court reserves on the motion at the time where there would be a trial, if any, but leaves it up to the bankruptcy court to manage litigation process, including entering interlocutory orders before that phase of the litigation. And I do not see a basis for delaying discovery because of pending motions to withdraw the reference.

I also am perplexed by the notion that one could withdraw a motion in an adversary proceeding, mainly a motion to stay to compel arbitration. I do not believe 28 U.S.C. 157(d) contemplates such an action. And the case law cited, albeit this will be for the district court to decide,

really doesn't go off on that basis, but rather reflects a decision to withdraw the reference of the whole adversary proceeding or counts within the adversary proceeding, not with respect to a particular motion. So that is I appreciate largely gratuitous to you all. But on the other hand, I think gives you some guidance on where I will be coming out. If I decide that I have jurisdiction, personal jurisdiction that is, and/or that the arbitration provisions either don't apply to this litigation or conceivably are overwritten by the Bankruptcy Code.

In the meantime -- and this should happen promptly -- the parties should meet and confer so that wherever this litigation goes, the 60 days are not wasted as the last month has been and they start belatedly only on focusing on the nature of discovery to be taken. They should meet and confer now as to first what discovery definitely would be required in an arbitration proceeding. Secondly, they should meet and confer on the nature of a protective order in that context that would be appropriate. And thirdly, they should meet and confer on limitations on the discovery that the debtors are willing to provide under a protective order, i.e. the targeted discovery that one of the counsel for the defendants has said the defendants want. To me, that is all time well spent. And the refusal to spend it I believe would have consequences in any future litigation.

So that should take place as well as the meet and confer on the limited discovery pertaining to the personal jurisdiction issue.

I don't know if anyone has any questions on that.

Okay, so I think it's clear what needs to be done. And I would expect that you all will be talking about this certainly by the end of this week and set up a meeting and submit and I would hope agreed discovery schedule on the discovery I am directing, which is as to the personal jurisdiction point and also meet and confer as to the other issues that I just described.

So unless anyone has any more questions, I think that will conclude the conference.

MR. LEVERIDGE: Your Honor, this is Rick Leveridge on behalf of the Ad Hoc Committee. Thank you for your direction, and we will certainly do exactly what you've directed us to do. The one point that I don't want to be lost in all of this is, you know, as we discussed at the outset of this hearing, the schedule that we proposed is a generous schedule. And there's no -- you know, I just don't agree with the point that we need to know who is in to set the schedule. We set the schedule based on an expectation that these motions would not be successful and all of these defendants are going to be in this case and would ask that the court at least consider entering a schedule now based on

the schedule we proposed because the insurers have refused to engage. And then the parties will know where we are.

THE COURT: The schedule to me did not seem unreasonable. One of the reasons that I believe the parties need to meet and confer, as I've discussed, is to ensure that they will be prepared to discuss any further schedule or any ramifications with respect to a schedule. I will treat the hearing on the motions to dismiss and the motions for stay also on the calendar as a second pretrial conference. And if I deny those motions or any of them, those parties and the other parties will need to be fully prepared to discuss a discovery schedule, which is another reason why, again, they need to meet and confer now to focus on it. And, frankly, I'm telling you right now six months of discovery given what the Debtors have volunteered, which will be narrowed and focused in the meet and confer that I've already said should occur now, seems reasonable to me.

But I don't see a reason to set it at this point. I think it's more properly set after determination of those motions. But I will have the second pretrial conference that same day at that same hearing, and I'll set the schedule then and be informed by what the parties have done to refine their thinking on it between now and then.

MR. LEVERIDGE: Thank you very much, Your Honor.

MR. KOEPFF: Your Honor, this is Paul Koepff from

Clyde. Have you yet set a date for the hearing on the motions?

THE COURT: I haven't. You need to speak to Ms. Lee on that. She is the person that handles my calendar, and she's very good at it. So she'll find you all a date.

MR. KOEPFF: Thank you.

THE COURT: Okay. All right. Anything else? Okay.

MR. SCHIAVONI: Nothing else, Your Honor. Tancred Schiavoni. Thank you very much.

THE COURT: Okay, very well. So that concludes today's agenda as well in the Purdue Pharma cases. So, hearing no one to the contrary, I'll hang up at this point. Thanks, everyone.

(Whereupon these proceedings were concluded at 12:13 PM)

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing transcript is a true and accurate record of the proceedings.

Sonya Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

Date: April 7, 2021